



POLICE DEPARTMENT

October 7, 2014

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Wanda Negron
Tax Registry No. 914670
Firearms Suppression Division
Disciplinary Case No. 2011-6023

The above-named member of the Department appeared before me on December 6, 2013 and February 21, 2014, charged with the following:

1. Said Sergeant Wanda Negron, while assigned to Manhattan South Vice Enforcement Squad, on or about July 7, 2011, at a location known to this Department, in New York County, while on duty, did wrongfully and without just cause fail to supervise other members of the service under her supervision to wit: said Sergeant failed [to] properly supervise a vice enforcement operation and failed to ensure that DD5s were properly prepared by two (2) members of service assigned to the vice enforcement operation.

P.G. 202-17, Page 1, Paragraph 1 – PATROL SUPERVISOR
DUTIES AND RESPONSIBILITIES

2. Said Sergeant Wanda Negron, while assigned as indicated in Specification #1, on or about July 7, 2011, at a location known to this Department, in New York County, did fail and neglect to properly follow department procedures relating to the release of a prisoner after being taken into police custody.

P.G. 210-13, Pages 1 and 2 RELEASE OF PRISONERS

3. Said Sergeant Wanda Negron, while assigned as indicated in Specification #1, on or about August 9, 2011, at a location known to this Department, in New York County, while on-duty, was discourteous to New York City Lieutenant Louis Riccardo, Tax #898369.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT
GENERAL REGULATIONS

4. Said Sergeant Wanda Negron, while assigned as indicated in Specification #1, on or about August 9, 2011, at a location known to this Department, in New York County, while on-duty, having been given a lawful order by New York City Police Lieutenant Louis Riccardo, Tax #898369, regarding the safeguarding of a prisoner, said Sergeant wrongfully and without just cause refused to comply with said lawful order.

P.G. 203-03, Page 1, Paragraph 2 COMPLIANCE WITH ORDERS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and Respondent was represented by Ricardo A. Aguirre, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of all Specifications.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Louis Riccardo, Detective Robert Rivera, Detective Cheng Wang, Detective Frank Batista, Detective Peter Cheregotis, and Sergeant Edward Martinez as witnesses.

Lieutenant Louis Riccardo

Riccardo, a twenty-four year member of the Department, is currently assigned to the Organized Crime Control Bureau Investigations Unit. On August 9, 2011, Riccardo was assigned to Manhattan South Vice. His duties consisted of supervising the team,

administrative duties and taking the team out. When he took the team out, his responsibilities consisted of enforcement, confidential informant buys, and overseeing operations out in the field.

On August 9, 2011, Riccardo and his team went out to the 6 Precinct to address the street prostitution. For this operation there had to be one supervisor and six detectives. Sometimes more than one supervisor would go out. Whoever stayed and processed the arrest would be named the leader on a Tactical Plan. There is only one leader for this operation and the person who is in the team leader's car has the kel. The kel is the listening device that the undercover has on their person. On August 9, Riccardo was part of the field team. He was the lieutenant and the overall supervisor but was also part of the field team because they were short-staffed that night.

If there are a lot of prostitutes out at night that the police need to arrest, then the captain will authorize them to stay out later. The operation might stop before the tour ended in order to process the arrests. (Department's Exhibit [DX] 1 is the Tactical Plan for August 9, 2011.)

Riccardo was involved in the arrest of Person A. Riccardo and Detective Rivera were the first on the scene to place Person A in cuffs. Riccardo thought that if Person A was going to fight then they would be in trouble so he approached Person A fast. Riccardo told Person A that if he acted like a gentleman they would treat him like one. Person A said “[N]o problem officers.” Then they rear cuffed Person A. A short time later, the rest of the field team and the prisoner van arrived. Person A was placed in the prisoner van with his seat belt on and they resumed enforcement. Riccardo stated that Person A’s demeanor was fine. Person A was the first arrest of the night.

A short time later, Riccardo heard a radio transmission. The undercovers were in the middle of another transaction and radioing for the police to assist in an arrest. This second individual they were going to arrest was Person B. When Riccardo got there, the prisoner was handcuffed. Person B was [REDACTED] who was tall and had a very calm demeanor.

When Riccardo asked Respondent what was going on, Respondent stated that she "wanted to put Person B in the van but wanted to cut the other guy loose." When Riccardo asked why, Respondent stated that the officers in the prisoner van told her that "Person A was banging and acting up causing a scene in the P van." Riccardo testified that he never witnessed Person A banging or causing a scene. When Riccardo looked into the van, Person A was fine and just sitting there. So Riccardo said, "Let's get this other prisoner in the back and let's resume enforcement." Riccardo did not see any visible injuries to Person A, nor did Person A indicate that he was injured or wanted to go to the hospital.

Respondent then said again that she wanted to issue Person A a Stop, Question and Frisk Report Worksheet (UF-250). However, Riccardo testified that Person A was under arrest for prostitution. A UF-250 is a tool used out in the field for officers who reasonably suspect that someone has committed a crime to stop the suspect and ask for pedigree information. Riccardo testified that a UF-250 would not have been the proper way to release Person A. This was because Person A was already under arrest and handcuffed in the back of the police van. Based on Riccardo's training and experience, there was probable cause for the arrest of Person A.

Riccardo told Respondent that Person A was fine and to get the other prisoner (Person B) in the back of the van. Riccardo testified that Respondent stated, "Fuck that,

I'm not putting that in the back of the P van" or "Why don't you put him in the back of your car." Riccardo replied absolutely not. Riccardo stated to Respondent that she had two choices: Respondent could either put Person B in the prisoner van or put the prisoner in the back of her car. Riccardo then ordered the detectives to put Person B in the van.

Respondent then turned and said, "That's a rap, we're going in." Riccardo said, "No we are not going back in. We have more enforcement to do. Everybody resume enforcement." After that Respondent turned to Riccardo and said, "I don't give a fuck, I'm going in." Riccardo testified then Respondent walked away from him, got in her car, and drove away. As she was driving away, Respondent radioed, "Field team, I said back to the barn." Riccardo then radioed, "No, you know we have more enforcement to do again. This is Lieutenant Riccardo, do not go in. I said resume enforcement." Respondent radioed, "Back to the barn. Field team, this is the team leader, back to the barn."

Then everyone drove away. Riccardo said, "We were just going back and forth and she wasn't listening to me." Riccardo then called Respondent on her cell phone two or three times and just got her voicemail. The debate between Riccardo and Respondent went on for at least 10 minutes. Meanwhile, the prisoner van was sitting on the corner. Riccardo did not see or hear any banging from Person A in the van.

After everyone left the scene, Riccardo kept trying to reach people over the radio. But nobody would respond. Riccardo then went back to the 7 Precinct and went up to his office. He assumed that Respondent was processing the arrests. When Riccardo went up to his office, he shut the door for a little bit. He then started typing up a Command

Discipline (CD). The CD that Riccardo typed up on August 9, 2011 was never adjudicated. The Commanding Officer, Captain Downing, was already gone for the day. Because Riccardo could not confer with Downing about what happened, he typed up the CD instead of talking to Downing the next morning. The next day, Riccardo was going to call Respondent into the office with Downing to discuss what had happened and to inform Respondent that she would be receiving a CD. But Respondent had taken off. Then the incident came to the attention of Chief Izzo. The CD was never adjudicated because “there was a determination by the inspector [Capaldo] in One Police Plaza... that he wants OCCB Inspections to look into this and to PG, interrogate everybody about the events that happened that evening.”

Riccardo was not present during the incident alleged in Specification Nos. 1 and 2. He did not sign any DD5s that were prepared by Detective Cheng Wang and Detective Frank Batista for the operation Respondent supervised on July 7, 2011.

On cross-examination, Riccardo agreed that Respondent was the team leader on August 9, 2011. Riccardo stated that he was the highest ranking supervisor in the field and that he outranked the team leader. Riccardo stated that this hierarchy is an established “policy” throughout the Department.

Riccardo admitted that he conveyed to Respondent that “if he is banging about, no big deal, because he’s a perp, you know, it doesn’t matter.” Riccardo said, “[I]f he was bleeding from his head like I said earlier in my testimony, or if something was wrong with him where he needed medical attention, then it would have been dealt with right then and there.” Riccardo did not recall Respondent telling him that Person A was being taken to the hospital. After being shown a Medical Treatment Of Prisoner form,

Riccardo still did not recall Respondent telling him that Person A was going to be taken to the hospital that night. Riccardo further stated that on this medical treatment of prisoner form there is a box to check off if the injury is old or new. The box checked on this form indicated that this injury was an old one.

Riccardo did not witness Respondent drafting a UF-250 to release Person A. Riccardo did not witness Respondent going into the prisoner van to release Person A. Riccardo did not witness or hear Respondent direct any of the detectives to go in and release Person A. Riccardo did not witness Respondent direct any of the detectives to draft a UF-250 for the release of Person A.

Riccardo did not recall opening up the van doors and saying to Person A to "fucking stop." Riccardo also did not recall Person B crying hysterically outside the van while Person A was acting up inside the van. Riccardo also did not recall Person B crying because Person A was screaming about not wanting to ride with any [REDACTED]

[REDACTED]. Riccardo agreed that Respondent was concerned for the safety of the members of the service along with the prisoners in the van. Riccardo agreed that Respondent eventually put Person B in the van after Riccardo ordered them to do so. Riccardo also acknowledged that Person A and Person B were placed in the van together and were being transported back to the command.

Riccardo was driving a car that had "tools" in the trunk. Riccardo did not recall if Respondent asked him about not having tools in his car. Riccardo testified that while there is one prisoner outside the van and another inside, the whole team was outside standing and watching the debate for 10 minutes. No one on the team moved. Riccardo did not recall Detective Rios radioing that the two prisoners were fighting again.

Riccardo did not agree that when Respondent heard over the radio that the two prisoners were fighting, she said, "It's a rap." Instead, Riccardo testified that Respondent made that statement right there to his face before anyone left. Riccardo testified that Respondent unilaterally decided she was ending everything for no reason.

Riccardo testified that after arriving back at the command, he had no more interaction with Respondent. They crossed paths that night but did not speak. When asked if he had the opportunity as a lieutenant to grab Respondent, discipline her and tell her that she would be given a CD, Riccardo replied that he did not because he had to confer with the captain first. He chose not to speak to Respondent because he was angry. He agreed that he has given a CD to a member of the service without having to confer with his next higher ranking officer. He had the authority to do so this particular night but it was his discretion not to do so. Riccardo did not recall calling Downing that night to inform him what Respondent had done but did recall speaking to him in person the next day.

Riccardo testified that he asked around the office if Respondent had used a UF-250 before to release a prisoner, and conducted an internal investigation about this. Riccardo learned from Detective Cheng Wang that she had. Riccardo agreed that he was the one who had told his supervisors and who started the investigation against Respondent.

Riccardo also agreed that he was not on the scene on July 7, 2011. He had nothing to do with that incident and did not know the reason for letting the person who was arrested go. Riccardo looked at the incident, found out information and handed it over to the Inspections Unit. Riccardo agreed that while he initiated the investigation,

those conducting the investigation made the choice to follow through with the information they were given.

Riccardo agreed that there are “distinct things” that are done in OCCB and Vice that may not be done on regular patrol. He also agreed that one of those things is being able to conduct a quick investigation, and if he sees that he didn’t have probable cause to arrest the person, that they let them go. He did not know if that is what happened on July 7 because he was not there. He agreed that Respondent is not the only person in OCCB or in Vice that has ever released someone with a UF-250.

On redirect examination, Riccardo explained that there have been instances where prisoners have become disruptive and “they do whatever steps they have to do.” Riccardo stated that as long as the prisoners are checked on and they are fine then the operation resumes. Riccardo also stated that they do not just stop the operation for somebody banging on the wall. Riccardo was surprised and caught off guard that Respondent wanted to issue a UF-250 to Person A.

On recross-examination, Riccardo was handed his Activity Log entry (Respondent’s Exhibit [RX] A) for August 9, 2011. Riccardo was asked about the ink in his entry on 2110 hours looking darker than those of the prior entries on the same day. Riccardo stated the ink looked the same to him. He agreed that the entry should be very detailed about what Respondent did in the field. He also agreed that “this is just a strict narrative of what supposedly happened on August 9, 2011.” Riccardo stated that he wrote it that night when he got back to the command. When he got back to the command, he was working on his Activity Log and the CD.

Riccardo also agreed that a team leader, whether it's a sergeant or lieutenant, has the discretion to terminate an operation. Both Riccardo and Respondent have made the decision to stop an operation as a team leader. Riccardo agreed that on August 9, Respondent was the team leader and he was not. He also agreed that Respondent made the determination to stop the operation. Riccardo believed that Respondent's deciding to stop the operation despite his orders was insubordination. Furthermore, Riccardo agreed that an old injury can be reinjured.

On recross-examination, Riccardo stated that he was not aware of Person A's handcuffs being loose and "his arms whaling about."

When the Court questioned Riccardo, he testified that there were a couple of instances where Respondent cursed. When they were first "debating," Respondent had said, "I don't care, I'm fucking going in." Riccardo agreed that there were other people present when Respondent said that. Those other people were about 10 to 12 feet away. In the second instance, Riccardo said that he would have to refer to his Activity Log. He did not recall what the instance was, but knew that there were two times and that both times people were nearby.

On continued recross-examination, Riccardo was asked if he used the word "fuck" when he was arguing with Respondent. Riccardo said that he did not think so and did not recall that. He agreed that there were times that he has gone into the command or during operations that he would use the word "fuck." He said he did not use it often but he has cursed.

Detective Robert Rivera

Rivera, a twelve and a half year member of the Department, is currently assigned to the 68 Precinct. In August of 2011, Rivera was assigned to Manhattan South Vice. On August 9, 2011, Rivera was doing "CI" buys with Riccardo. After the CI buys, Rivera joined the field team outside on the street to do "street prosts" around Christopher Street, Westside Highway and North Washington.

On August 9, 2011 Rivera was involved in the arrest of Person A. The undercovers got the description of Person A and the direction Person A was walking. Rivera and Riccardo then drove up to the location and stopped Person A. Rivera stated that he and Riccardo exited their unmarked vehicle, approached and stopped Person A. They told Person A what they were doing and Person A complied. Rivera described Person A as "a tall black man that had a physical stature that was pretty big and intimidating when they first encountered him." Rivera did not remember exactly what he told him, but that he was being arrested for prostitution, "or something like that." After Person A was handcuffed in the rear, the rest of the team drove up and Rivera took Person A over to the prisoner van. Rivera then handed Person A over to the prisoner van personnel. Rivera testified that he did not think that he was physically involved in placing Person A in the prisoner van.

Person B had made an agreement with one of the undercovers. The undercover told them the description and the direction that Person B was walking. Rivera drove to the location and placed Person B under arrest. The prisoner van was a large van, as described by Rivera, with windows completely blacked out. The prisoner van had two doors. Since the lights were on inside the prisoner van, they were able to see what was going on inside the van. Rivera stated that Person A wasn't happy, wanted to get out of the van, and wanted to be released.

Rivera stated that they were going to put Person B inside the van, but “[Respondent] thought it was a bad idea to put the second individual inside the van with the first.” Rivera stated that Person B was [REDACTED], “so she [Respondent] thought it wasn’t good for safety reasons to open the van up because Person A was standing up in the van.” Rivera said that Person A was a big guy so she [Respondent] thought that the second individual could be in harm’s way from Person A. Rivera testified that Riccardo told Respondent to open up the van so they could put Person B in and Respondent said no. At that point, a small argument ensued between Respondent and Riccardo. The argument involved Riccardo wanting Person B inside the van so they could continue doing “street prost.” Rivera stated that Respondent was “dead set” against putting Person B in for safety reasons because she thought that the police could get hurt and that Person B could get hurt. Rivera also stated that Respondent said to Riccardo to take Person A out of the van and put him in Riccardo’s car so that the two individuals could be transported separately. Riccardo said, “No way, I’m not doing that. Why don’t you put Person A in your car.” Riccardo said that Respondent replied, “No fucking way, I’m not doing that.” Rivera was in the same vehicle as Riccardo.

Person B was eventually placed in the van with Person A. Riccardo testified that after the second individual was in the van, Respondent stated that they were all going “back to the barn” and that they were ending street enforcement. Respondent stated this when everyone was outside the van. Riccardo then told Respondent that they were going to continue enforcement and for everyone to get back to their vehicles. Once everyone went back to their vehicles, Respondent came over the radio and stated that they were going “back to the barn.” Riccardo then came over the radio saying that they should

continue. Respondent then said, "No, everybody is going back to the base now." Rivera then went back to the base.

Once they got back to the base, Rivera parked Riccardo's car inside the garage and went outside to help the two prisoner van personnel bring out Person A and Person B. Person A was still inside the van and Person B was outside. Person A stated to Rivera that he wanted to go to the hospital. Rivera walked into the Precinct, got a Medical Treatment of Prisoner form, walked outside, and gave it to the prisoner van personnel. Rivera did not know if there were any incidents that occurred between Person A and Person B while they were both in the prisoner van.

On July 7, 2011, Rivera was assigned to the "chase car." Rivera was one of the assisting officers in the arrest of Person C. Once Person C was placed in the prisoner van, Rivera did not have any interaction with him.

On cross-examination, Rivera stated that he wasn't assigned to the chase car but was assigned to be Riccardo's operator. Before the argument between Respondent and Riccardo, when they opened the doors from the outside of the prisoner van to put Person B in, Rivera was able to see that Person A was standing up inside the van. During the argument between Riccardo and Respondent, Rivera did not remember any discussion regarding the kel device and also did not remember Riccardo using the "F word." Rivera agreed that he never heard Respondent tell Riccardo outright that she was not putting Person B in the van.

Rivera stated that Respondent was an excellent sergeant. Rivera agreed that Respondent was always concerned about the safety of the officers and safety of the prisoners. Rivera stated that a team leader determines when they are going to terminate

enforcement on the street. Rivera agreed that there were times prior to August 9, 2011 that a team leader has terminated an operation. Rivera did not remember hearing over the radio a transmission by Detective Rios that prisoners were starting to fight again.

Detective Cheng Wang

Wang, a seven year member of the Department, is currently assigned to Brooklyn South Vice. Between 2010 and 2012, he was assigned to Manhattan South Vice and was involved with operations such as gambling, prostitution, and untaxed cigarettes.

On July 7, 2011, Wang was working as an undercover. He was involved in an enforcement operation at [REDACTED] and was the primary undercover for that specific location. There was a complaint for illegal gambling in the basement of the establishment. When Wang arrived at the location, he went down to the basement, and saw people playing card games and Mahjong games. Wang observed money exchanged between the players and “once in a while the winner would put X amount of house money into the basket.” Unable to join the game because the table was full, Wang just stood and watched.

Wang explained that as an undercover, to make a viable arrest for gambling, he must observe the manager or those running the operation take the house money from the basket. Wang stated that he was inside for about an hour and a half and was unable to see anybody take money from the basket. Wang then went to purchase two packs of untaxed cigarettes from an individual inside the location.

During this operation, there were two other undercovers, which were Wang’s ghosts, and other members of service from Manhattan South Vice, and Respondent.

Wang did not remember if supervisors were present besides Respondent. The team leader for that date was Respondent. According to the Tactical Plan (DX 2), there were no other sergeants or ranks above Respondent working on that enforcement operation.

While Wang was in the basement, he was in communication with Respondent. Wang decided to purchase two packs of untaxed cigarettes. He bought them because, based on his undercover experience, all the Chinese gambling locations are also selling untaxed cigarettes. He approached an Asian male to purchase the cigarettes who he named as "JD Blue." Later he learned the identity of this individual to be Person C. After Wang purchased the cigarettes, he texted the team leader (Respondent) to move in. Wang did not specify what the transaction was for when he texted Respondent. While Wang was walking back to his undercover vehicle, he called Respondent to give her the description of Person C, who sold him untaxed cigarettes. While driving to the next location, he realized that he could not do a buy and bust on untaxed cigarettes. Wang then called Respondent and stated that "he was sorry and he forgot to tell her that." Wang said that he "understood the kite is for illegal gambling, but [he] forgot to mention that [he] did not observe any illegal gambling." Wang stated that the only thing that he did was purchase untaxed cigarettes.

Later on that day, they had a post tactical meeting. At that point, Respondent approached Wang and asked what was going on with the operation. Wang apologized again and said that he forgot to mention to her that it was for untaxed cigarettes and not for gambling. Wang stated that it was his fault for the miscommunication and Respondent told him not to let it happen again. Wang stated that he believes to the best of his knowledge that Person C was released.

As a result of his failing to identify the individual he bought untaxed cigarettes from on the Complaint Follow-up Information¹ form (DD5) (DX3), Wang received a Schedule B Command Discipline with a penalty of two days.

On cross-examination, Wang stated that he identified Person C on the basis that he sold him two packs of untaxed cigarettes. Wang did not remember what he texted Respondent because he did not have the text messages on him, but he did remember that he did communicate with Respondent through text messages. He stated that he did not tell her that "JD Blue" sold him untaxed cigarettes. After the team moved in, they arrested Person C, and took him to the van. Wang then told Respondent that Person C was arrested for untaxed cigarettes. Wang admitted that he knew it was against policy to arrest someone for untaxed cigarettes without a search warrant.

Detective Frank Batista

Batista, a thirteen year member of the Department, is currently assigned to the Narcotics Bureau Bronx Vice Module. On July 7, 2011, Batista was assigned to Manhattan South Vice as Respondent's operator. They were doing a buy and bust operation for gambling. If the undercover sent in observed gambling, then arrests would be made.

Wang was the undercover who was sent into the location. The team moved in and the people there were told not to move. Batista believed that Respondent got on the phone with Wang. Batista guessed that Respondent got a description for the person to be arrested from Wang. Respondent then pointed Person C out; they arrested Person C and took

him upstairs. Detective Ort was the assigned arresting officer. Person C was then placed in the prisoner van and they drove off.

While Batista was in the car with Respondent, Respondent received a phone call from Wang. After the phone call, they were told to go back to the location. Batista was asked if he heard any of the conversation between Respondent and Wang. Batista stated that Respondent said, "Are you kidding me? That's it? But you were in there for so long." Batista stated that Respondent came over the radio and told the field team to go back to the [REDACTED] location. Batista asked Respondent why they were returning to the location. Respondent mentioned that Wang had purchased untaxed cigarettes from the location and he wasn't able to gamble. The arrest was for cigarettes, not gambling.

When the field team returned to the [REDACTED] location, Respondent instructed the prisoner van to release Person C and complete a UF-250. Respondent was directing the prisoner van to release Person C because he was not arrested for gambling. At that time, Vice Enforcement Division did not want an arrest for cigarettes. Batista was present when Person C was released. Batista prepared a DD5 (DX 4) following the enforcement operation on July 27, 2011 and sent it to Respondent through the Nitro database.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On August 9, 2011, Batista was assigned to Manhattan South Vice, where they were doing a prostitution operation in the vicinity of the 6 precinct. Batista was assigned to the prisoner van with Detective Rios. Respondent was the team leader assigned.

Riccardo was there later on, but Batista did not remember if Riccardo was there from the beginning. Riccardo was part of the enforcement team when Person A was apprehended.

Batista stated that Person A made an agreement for some sort of sexual conduct in exchange for U.S. currency. Batista stated that Respondent radioed "move in" and gave a description. They moved in for the arrest, stopped Person A and cuffed him.

Batista described Person A as "very irate." Batista testified that Person A was wondering why he was under arrest. Batista stated that they placed Person A in the prisoner van and tried to get some pedigree information. Person A then started kicking and they closed the door.

When Person A was in the prisoner van, Batista said that Person A was disruptive, yelling, and cursing. Person A asked why he was stopped when he didn't do anything wrong and was just walking. Batista also stated that "[Person A] started kicking the P van, he starting banging his hands, his head on the P van, kept kicking the door, kicking the floor, and kicking...[the] cage in the back." Once Person A was in the prisoner van, Batista tried to calm him down and talk to him through the caged door.

Batista was also involved in the apprehension of the second individual Person B. Batista stated that Respondent put over a description of Person B. The whole field team then moved in and placed Person B under arrest. Batista cuffed Person B himself.

While Person B was handcuffed, Person A was still irate and kicking. Batista said, “[Person B] was scared to go into the P van because Person A was kicking.” Person B said, “What’s going on, who is in there, am I going to be okay, am I going to be okay?” The prisoner doors were not open at that time. Batista said that Person A was loud. While Batista was holding Person B, the prisoner van door was open, but the cage door closed. Riccardo was present, along with Rios, Rivera and Respondent.

Batista testified that Person B asked if the guy was going to “kill her.” He stated, “She wanted to know what was going on. She was a bit scared.” While the rest of the team was trying to calm down Person A, Batista did not overhear the specifics of the conversation, but remembered they were going back and forth about what car to put Person B in. After the officers were talking to Person A for some time they were able to calm him down. As they drove off, Person A was kicking and cursing again. Person B was screaming, “Get me out of here, this guy is going to kill me.”

Respondent and Riccardo were having a discussion about where to place Person B. Riccardo wanted to continue to do enforcement and Respondent wanted to call in the operation over the radio. Riccardo was saying to stay out and that it was still early. Respondent came over the radio a couple of times and said “No, no let’s call it: You know, this guy is being—he is very irate, he is pretty pissed off.” Respondent said to “end the night and to start processing.” Batista stated that Riccardo and Respondent went back and forth over the radio. Rios picked up the radio and said “Listen, boss,¹ this guy is pretty pissed off, we have to call it. We have to go.” Batista stated at that point, he believes that Respondent “called it” and they went back to the Precinct to process the arrests.

¹ Batista stated that he was unsure if Rios was referring to Respondent or Riccardo.

At the location where Person B was arrested, Batista did not observe any physical injuries to Person A nor did Person A complain of having any. When Person B was being apprehended, Batista did not hear Respondent and Riccardo talk about releasing Person A. Also, during the enforcement operation, Batista did not hear any conversation about the preparation of a UF-250 for Person A. After Rios said "We have to go," Batista believed that Respondent said, "Let's go."

On cross-examination, Batista stated that once both the perpetrators were in the prisoners' van, Rios blurted out that the guy was pretty pissed and they had go to "the barn" and then Respondent gave the order to "take it back to the barn."

Detective Peter Cheregotis

Cheregotis has been a member of the Department for almost 17 years, and currently works as an investigator for Manhattan South Vice.

Cheregotis was assigned to the prisoner van with Detective Campos on July 7, 2011. Respondent was the team leader for that day.

Because there had been a complaint for gambling, Cheregotis assumed that the person (Person C) arrested was arrested for gambling. Cheregotis was not informed by anyone why the arrest was being made. Once Person Can was in the van, they moved to the next location, where Respondent "basically said that he wasn't arrested for gambling." Respondent explained that the undercover had been arrested for cigarettes instead of gambling.

Respondent then said that they were going to release the gentleman. Respondent indicated they should uncuff him. Respondent did not give any direction about what

procedure to use for the release of Person C. Respondent said "to just uncuff him, give him his property back and conduct a 250." Cheregotis filled out a UF-250 for the release of Person C (DX 5).

When asked if after July 7, 2011 there was a question whether this was the proper way to release Person C, Cheregotis answered, "No." Cheregotis agreed that after July 7, 2011, he was never given direction or instruction by anyone at Manhattan South Vice about the proper way to release an individual in police custody.

Person C was in the prisoner van for about 15 to 20 minutes. When they returned to the original location at [REDACTED], Respondent explained to Person C why he was arrested and why he was being released. She apologized for the inconvenience and gave him his property back.

On cross-examination, Cheregotis said that there were times when individuals were handcuffed and then released at the scene. Cheregotis said, "[I]f there was an investigation and we're not sure as to what's going on, people would be handcuffed for our safety, then once things are figured out, they would be released." The UF-250 is the form that would be used in the field. When Respondent told Cheregotis to draft a UF-250, Respondent did not find anything unusual about that from his experience in Vice and in OCCB. Cheregotis stated that Respondent was a great supervisor.

Sergeant Edward Martinez

Martinez, a member of the Department for over twenty years, is currently assigned to the Organized Crime Control Bureau Investigations Unit (OCCB). He has been assigned to OCCB for over three years. Martinez investigates allegations of

misconduct by members of the service. Vice Division asked his office to investigate the circumstances of an insubordination case involving Respondent.

Martinez stated that during this investigation, he learned from Ricardo that on July 7, 2011, a prisoner, Person C, was released from the prisoner van after being arrested and a UF-250 was prepared. The undercover (Wang) bought untaxed cigarettes from the individual and transmitted a positive to the field team. Afterwards, it was determined that he was arrested for untaxed cigarettes, not gambling.

Martinez understood that Respondent thought the arrest was for gambling; so Person C was returned to the arrest location and then released on a UF-250. Martinez said that the UF-250 should not have been prepared because he was moved involuntarily from the location. According to procedure, if he gives consent, he can be moved or if there is an emergency situation he can be moved. In this situation, he was placed in handcuffs and moved from the location for approximately 20 minutes. Under those circumstances a UF-250 would not have been the proper paper work to fill out. In a release from custody situation, if it is determined that a crime was not committed, the individual should be released immediately and the arresting officer should go back to the command to fill out paperwork for a voided arrest. Paperwork for a voided arrest was not prepared for Person C.

Martinez stated that both the undercover and the investigating officer completed DD5s for July 7, 2011. (DX 3 and DX 4) Respondent was listed as the team supervisor for the operation. The team supervisor's responsibility is to ensure that the team members complete the DD5s promptly and correctly. There were omissions in the two DD5s submitted into evidence.

A kel was used on July 7, 2011, but it was turned off. Martinez recalled that Respondent stated during her official Department interview that there was some feedback and they were speaking a foreign language that the field team could not understand. Under the OCCB guidelines, the kel should be used when doing a “gambling kite.”

Regarding the incident of August 2011, Martinez stated that there was a prisoner in the prisoner van and a second arrest was made for prostitution. Respondent made a determination not to put the prisoner in the prisoner van in contradiction to Riccardo’s determination. Martinez stated that the highest ranking member present at the August 9 incident was Riccardo. As per the Tactical Plan (DX 1), the team leader for that date was Respondent. Martinez stated that the team leader is in charge of the operation regarding this incident. The team leader would coordinate all the activities and Riccardo on the paper was known as a member of the field team. However, Riccardo was the highest ranking member present. Thus, when Riccardo gave an order, all members of the field had to follow it.

According to Department guidelines for dealing with disruptive prisoners, Martinez stated, if a prisoner is a danger to himself or others, the Emergency Service Unit (ESU) should be called to the scene. If the prisoner is able to be transported to a hospital by ESU, a doctor could determine whether he is emotionally disturbed or not. ESU was not involved in this particular enforcement.

Riccardo had given Respondent orders on August 9, 2011 to place the prisoner in the van, which she did not. Respondent was also ordered to place the prisoner in the vehicle that she was using, which Respondent did not. Respondent was also ordered to continue the operation after the prisoner was placed in the prisoner van, which

Respondent did not. No enforcement operation was continued after this incident on August 9, 2011 because Respondent ordered all members back to the command and they complied.

On cross-examination, Martinez agreed that as a team leader, the policy is that the team leader is the one who makes the decision. That policy changes when there is an emergency, or a supervisor or a higher ranking officer intervenes with an order. Martinez agreed that some higher ranking officers were more involved with the team leader than others.

When in the field, the team leader should coordinate activities, let the field team know when the undercovers are out of the vehicle, transmit information from the undercover to the field team, ensure safety, make a call when an arrest or a buy is going to be made.

During Martinez's time at OOCB, he believes he has used a UF-250 to release a prisoner. He has also witnessed either other officers or supervisors using a UF-250 to release a prisoner.

Martinez consulted with the Department Advocate's Office about the charges in this case. Martinez did not remember if the first time he came they rejected the investigation and said it didn't warrant charges and specifications. He was unaware that this case may have been rejected for charges and specifications more than three times.

During the time when Martinez was in OCCB, he never transported a prisoner in a leader car. This was because they had a prisoner van.

When the Court questioned Martinez, he was asked about the use of a UF-250. Martinez stated, "You can stop, you can, you can detain, you cuff for your safety, and

release the person; but my interpretation is, is that once you move that individual against his will and he's subsequently released, especially over a period of 20 minutes, it would...have require[d] a voided arrest instead of a UF-250." Martinez testified that a person can be cuffed for safety and if they are not moved from the location then they can be released by completing a UF-250. In his opinion, if someone is cuffed, moved, and time has passed, then paperwork for a voided arrest should be completed. In Martinez' opinion, if the person was at the scene and not moved, then a UF-250 should be completed.

On recross-examination, Martinez said that, during the course of the investigation, it was assumed that Respondent signed the two DD5s (DX 3 and DX 4) but Respondent made it clear during her official Department interview that she did not.

Respondent's Case

Respondent testified on her own behalf.

Sergeant Wanda Negron

Respondent, a nineteen year member of the Department, is currently assigned to the OCCB Firearms Suppression Division (FSD). She works in the Gun Offender Monitoring Unit where she monitors gun offenders who have been released on a prior felony gun charge.

Respondent was assigned there by Chief Anthony Izzo who was the former bureau chief of OCCB. Izzo was also the same person who signed off on the instant charges and specifications against her. Izzo summoned Respondent to his office the day before she was transferred and stated that he was apologetic for having judged her

without having personally met her. Since the date of the incident he had heard nothing but great things about her. With that said, he said that he wanted to move her closer to home if she was okay with being assigned to the FSD.

On July 7 2011, Respondent was working with the Vice Enforcement Unit where she was assigned as the team leader. As a team leader, she was to oversee Vice operations that involve public moral violations. Respondent recognized the two signatures on the Tactical Plan (DX 2) for July 7, 2011 as hers. She stated that this is the way she signs all her documents in the Department, unless the form indicates it should be initialed.

On July 7, 2011, Respondent had nine individuals that were assigned to her. The team leader usually tries to address kite locations that would have been "in the queue for over six weeks so that they could either close out the kite or buy arrests or close out the kite as negative." Respondent stated that she is usually in her office getting the Tactical Plan together. She likes to talk to her detectives to see what kites they think would be best to address on that particular day.

Wang was assigned to be the primary undercover to enter the location to address a kite that had come in to the "FOD desk for investigation of unlicensed gambling." Wang is the primary gambling undercover that they use because he speaks several dialects. When Wang entered the location at [REDACTED], Wang and Respondent maintained contact through text messages. This was because Wang felt that the kel device would cause a feedback because he was going into a basement. Respondent stated that Wang thought that texting would be the best way to communicate so his cover wasn't blown.

Respondent stated that Wang was inside the location for about an hour and a half and that she was in communication with him.

Respondent was expecting Wang to make a buy for gambling. She stated that for an arrest to be made there would have to be an exchange of money via a dealer or a banker who would usually handle a basket. Wang then had to see the exchange, gamble, and see this individual pay out to any winning hand. Respondent stated that she texted Wang, "How many bodies?" and Wang responded, "About ten." Then Respondent stated via text, "Wrap it up. You've been inside too long." Right after her text, Wang responded, "Move in." Respondent went over the Department radio and alerted the field team to "move in."

Respondent's team then moved into the location, and Respondent was texting Wang to get a description of the individual. Wang responded, "A guy in the blue shirt." Usually Wang would say JD Blue or JD Red. There was only one individual in the whole room that had a light blue shirt on. Respondent then sent Wang another text asking if there was anyone else. Wang replied, "No one else." Respondent then took a photograph of the individual and sent it to Wang so he could make an ID of the individual. Wang replied by writing "positive." The individual was then escorted outside and placed in the van.

Respondent stated that at no time did she tell or order Wang to shut off his ket device. She agreed that Wang made that decision alone. Once Person C was placed in the van, they began to move to the next location. Before arriving there, Respondent called Wang and asked Wang, "[W]hat do we have here, the dealer or the banker?" Wang replied, "Oh, shit, Sarge, I didn't gamble, I bought cigarettes from him." Respondent

replied, “[Y]ou did what?” At that point, Respondent hung up the phone and reached out to the prisoner van which Cheregotis was in and told him to return back to the location of [REDACTED].

Respondent said that she ordered the prisoner van to return back to the original location because it is OCCB policy that as a division they can not make an arrest, or a “rip,” for cigarettes without a search warrant. Respondent stated that this was her training and that she learned about this policy from Riccardo and Captain Downing.

When Respondent got back to the location, she released Person C and then had the field team meet her. All the parties on the Tactical Plan were present. At that point, she asked Wang, “What was that?” Wang responded, “I didn’t get on this month.” Respondent then said, “What? What did this mean?” Wang repeated, “I didn’t get on this month.” Respondent understood “I didn’t get on this month” to mean that as undercovers they must have a certain number of buys. Wang indicated to Respondent that he had not made any positive buys during that time period, and so this had been his opportunity.

Respondent then addressed everyone and repeated the policy that was told to her, which is that there will be no arrests for untaxed cigarettes without two positive buys and then a search warrant. At their post tactical meeting, they addressed Wang on what had just happened.

Respondent knew what a DD5 was but not what was written in DX 3 and DX 4. The first time that she saw DX 3 and DX 4 was during her official Department interview. She acknowledged that her name and tax number were printed on the forms. Respondent recognized the initials to be Downing’s initials. Respondent recognized the signature to be Downing’s signature as well. Respondent also stated that those were not her initials on the forms and the signature in the supervisor’s signature box was not hers. She was

not sure how her name got generated onto the form. She stated that the captain, any commanding officer or any unit has access to the case files. She stated if these DD5s are printed, they will generate her name on that file. Within the division, the file is not finalized until there is a physical signature. A computer-generated printed name is not considered an authorization.

On August 9, 2011, Respondent was addressing “a street pros condition” where she was the team leader. On that day, they had a meeting where they discussed their Tactical Plan for the day. Team One, consisting of Riccardo, Rivera and Campos, had the responsibility of having what they call the “tool auto.” The tool auto contains a sledgehammer, a ram and a kelly tool, which breaches the doors if they needed to get inside of a location. They would use these tools if they needed to extract an undercover from a location.

On her kel receiver in her car where she was monitoring undercovers’ conversations, Respondent heard Person A and Chen make an agreement for Person A to perform oral sex on the detective. Then one of the other undercovers who were in the vehicle with Chen stated over the air, “Leader, positive buy.” Respondent then asked what the location was and got a direction in which the individual was walking. When Respondent arrived at the location, Riccardo was already there with Rivera. Rivera had already placed Person A under arrest. Respondent stated that all she heard Person A say was, “What am I being arrested for? I don’t get this, what’s happening?” Rivera responded, “If you treat me like a gentlemen, I’ll treat you like a gentleman, and we’ll discuss it later.” Person A continued to ask what he was being arrested for.

At that point, the undercovers put over the radio that they had another “positive buy.” Respondent questioned what they were doing because they had to wait for her as the team leader to give them the signal to continue. Riccardo heard this and said, “These fucking guys.” At that point, Respondent said, “I’ll deal with them later.” Respondent received a description of Person B. Respondent and the prisoner van arrived at the location.

Person A somehow managed to get himself out of the seatbelt harness that he was strapped into in the van. Respondent stated that Person A was punching the sides of the van, not happy to be in there, and kept screaming, “I’m not a prostitute, I’m not a fucking prostitute.” Respondent stated, “Person B was crying because he did not want to go into the van with Person A.” Person B was afraid and said, “I can’t go in there, look at me.” Respondent stated that she just walked away and Campos secured Person B so that Respondent could go behind the van and try to speak with Person A. Respondent went to the back of the van and asked for Person A to please have a seat. Person A replied, “Fuck you, fuck them, fuck the police.” Rivera said from behind, “Just fucking mace him and taser him.” Respondent replied to Rivera, “I’m not going to do that, what’s wrong with you?” Person A also said, “I did a fucking seven-year bid for fucking you guys up, you think I’m afraid of you.” At that point, Respondent shut the door and said, “[I] think that he needs a minute and let’s see if we can get him to calm down.”

Respondent stated that Riccardo was just on the street and didn’t even participate. Respondent then looked at Riccardo, “Riccardo then made a gesture like now what.” Respondent then asked Riccardo, “What are we going to do with them?” Riccardo said to put them in Respondent’s car. Respondent said, “Lieu I can’t put him in my car; it has

a kel device in there and my car's not equipped to transport prisoners, and my set is still alive." Respondent told him that it was not safe for the undercovers. Respondent suggested that Person B could be placed in the chase auto since Riccardo had the van. Riccardo replied, "I'm not putting that fucking thing in my car."

At that point, Respondent asked, "Where is the chase auto?" Riccardo said, "Let's deal with this right now." Respondent then asked, "Where [are] the tools?" Riccardo replied, "What the fuck do we need tools for? We're doing a street pros condition." Respondent replied, "We need tools because if one of the UCs makes an agreement inside a building location and we need to extract him, how are we going to get them?" Respondent asked again what were they going to do. Riccardo said, "Put him in your car." Respondent again stated that she could not do that. Respondent then agreed to switch vehicles but said that Riccardo had the car with no tools in it. Riccardo then replied, "Why are we fucking talking about tools for? I don't get the whole tools thing; we're still doing street pros." After going back and forth, Person B was eventually placed inside the prisoner van.

Respondent stated that she did not tell Riccardo that she was going to issue Person A a UF-250. She stated that Ort, who was frustrated said, "Just UF-250 him." Respondent said that they could not do that. Respondent testified that Riccardo must have heard Respondent say "UF-250" and told Respondent, "We can't do that." Respondent said, "I know we can't do that."

After Person B was placed in the van, Respondent went back to her car and everyone went to their respective vehicles. Riccardo was already walking away when Respondent went to her car. Respondent did not recall saying, "This is a wrap, I'm going

back to the car." Respondent testified that she said, "These guys get into a fight, I have to end this operation." Riccardo told her, "I don't think that's a good idea; the Captain is not going to like that."

Once Respondent was back in her car, she was waiting for the undercovers to give "the green" to continue. They were continuing enforcement operation that evening. Respondent stated that they probably got a block and half away when Batista, the passenger of the prisoner van, radioed and said, "There's fighting back there." At that point, Respondent said, "Back to the barn everyone. We're done."

Respondent said that she never heard Riccardo make any transmission on the radio after that statement and Respondent's phone never rang while they were on their way back to the barn. Respondent stated that Riccardo never gave her a direct order. She maintained, "I would never knowingly and willfully disobey a lawful order as a supervisor." Respondent said she did not curse at Riccardo. Respondent also said that she never disobeyed a lawful order by a supervisor in her career in the Department and has never been disciplined for disobeying a lawful order.

Once Respondent got back to the precinct, she encountered Riccardo. When Respondent went up to her office, Riccardo was making copies in the office. When Respondent said to Riccardo, "We pulled up, Person A is going to the hospital, he said his back hurts." Riccardo replied by saying, "What?" Respondent said, "Yeah, you know." Riccardo went back to his office and Respondent called the prisoner van to make sure they got to the hospital. While Respondent was in the precinct, she received a call from Downing asking if she had an emotionally disturbed person. Respondent answered, "No." Downing said, "Riccardo called and said that you terminated the operation

because there was a hostile perp inside the p-van. Did you call to take him to the hospital?" Respondent replied to Downing and said, "Why would I take him to the hospital? He eventually went to the hospital when we got to the precinct because he injured his back in the p van, but I'm not understanding what this call is about." Downing replied, "Riccardo said that you had a perp in the car that was acting irrational, and you didn't call ESU and didn't take him to the hospital." Respondent replied, "I didn't think it was necessary to take him to the hospital; he was angry that he was arrested." Then they both ended the conversation.

Respondent stated that at no time before Riccardo left the precinct did they talk about the incident and he did not say that he was going to give her a CD. Riccardo also did not indicate that somewhere down the line Respondent would be spoken to about what happened.

After August 9, Respondent was scheduled for her regular day off. When she returned she was notified of a Department hearing and did not know what it was about. After the hearing on August 26, she was transferred to Queens Narcotic and was not given a reason. She was then transferred from Queens Narcotic to a field assignment, then behind a desk in FOD at One Police Plaza.

On cross-examination, Respondent reiterated that she spoke with Wang about turning off the kel device. Wang stated to Respondent that he was going to turn off the kel because it gets a lot of feedback and he didn't want attention brought to him. Respondent said that it was fine since Wang had his phone with him. Therefore, Respondent gave Wang the okay to turn off the kel.

From the time that Person C was placed in the van until the time that Respondent had the conversation with Wang, approximately 15 minutes had passed. When Respondent and Wang spoke, Wang told Respondent that he forgot to mention that he didn't gamble, but instead that he had bought cigarettes. Respondent then directed the prisoner van back to [REDACTED]. Respondent did not speak with anyone between the time that she found out that Wang actually made the purchase for untaxed cigarettes until she had returned to the original location. At the original location she spoke with her team members, but no one else. There, Respondent, as the supervisor, directed Cheregotis to prepare the UF-250. After Person C was released, the team was directed to the post-tac location where they all reconvened to discuss what just happened. There were about two more hours of activity performed by the team at [REDACTED].

Respondent did not prepare any other documentation other than the UF-250. Since Batista was the one assigned the kite, he was required to prepare a DD5 and Wang would have to prepare one as well. The DD5s in evidence as DX 3 and DX 4 do not detail the circumstances of Person C being placed in handcuffs, placed in the prisoner van, and released with a UF-250.

On August 9, 2011, Respondent was the team leader and Riccardo was working enforcement along with the team. Riccardo was higher in rank on the scene than Respondent.

Person A said, "I will fuck you up if you open this door," in the presence of everyone who was standing in front of it. During the entire time that Person A was in the prisoner van, Respondent testified that she never used profanity towards Riccardo. Respondent

agreed that she did not say to Riccardo that she was going to round up the field team and go back to the barn.

Respondent testified that it was her responsibility to ensure that the tools are out in the field. Riccardo was in the chase auto and had decided not to take the tool auto out.

Respondent had her cell phone with her. There was no radio communication between Riccardo and herself.

When questioned by the Court, Respondent explained that she thought Person C was being held for gambling. She knew that it was the Bureau's policy not to "rip" for untaxed cigarettes. Respondent said that she "had other sets that [she] also had to visit; so [she] didn't not want to inconvenience [Person C]" any longer when she knew that he was going to be released anyway. Respondent stated that there was no clear reason why she did not use the forms to void the arrest. She testified, "I released someone who shouldn't have been held in custody, rather than take him." She stated, "If he's not going to be processed, I'd rather release him from the scene then having to take him to multiple sets." Respondent stated that if she had prepared paperwork for a voided arrest, Person C would have been in the van for five hours.

On recross-examination, Respondent testified that the sale of untaxed cigarettes is an arrestable offense. Respondent also testified that she had been in a situation before July 7, 2011 when Riccardo released three alleged prostitutes from the van where Riccardo did not document that release on any form. An arrest can be voided by a member of the service. A prisoner does not have to be present in the stationhouse when that is done.

When questioned by the Court, Respondent stated that someone signed the initials on the DD5s. (DX 3 and DX 4). She recognized those initials to be Downing's. Respondent admitted that she should have reviewed the DD5s.

On redirect examination, Respondent stated that she let Person C go because “[i]t was just my moral compass.” She felt that she did not want to hold someone in a van for the next couple of sets when she could have released him. The arresting officer would be responsible for voiding the arrest when they returned to the command, not Respondent. Riccardo did not discipline Respondent regarding the incident nor did Riccardo require Respondent to do any of the paper work related to that incident.

Respondent did not call ESU for one of the prisoners because the prisoner wasn't emotionally disturbed. Instead, Respondent let Person A cool down and then placed Person B in the van with Person A.

FINDINGS AND ANALYSIS

Specifications Nos. 1 and 2

Background

On July 7, 2011, Respondent was the team leader in an operation to uncover unlicensed gambling. Based on a signal given by Detective Wang, Respondent's primary undercover, Respondent's team arrested Person C and placed him in the prisoner van. After the team had driven to the next location, Respondent learned from Wang that he had not gambled, but had bought untaxed cigarettes from Person C. Because, according to Respondent, an arrest for untaxed cigarettes could not be made without a warrant, Respondent returned to the previous location to release Person C. Instead of preparing

paperwork to void the arrest, Respondent released Person C by directing Detective Cheregotis to prepare a UF-250. Respondent explained that filling out an arrest form would have meant returning to the precinct where Person C would have been held for at least 5 hours.

Two DD5 forms were prepared. One DD5 was filled out by Detective Batista and one by Wang. The DD5s contained incomplete information for a Vice enforcement operation. In these forms, the detectives omitted the identity of Person C and that Person C was placed in handcuffs, placed in the prisoner van, and released by a UF-250 form after being taken into custody. Wang received a Schedule B Command Discipline with a penalty of two vacation days for omitting information in the DD5 form. Batista also pled guilty to improperly preparing a Complaint Follow-up Report. Because Batista pled guilty to other charges on an unrelated case, he received a total penalty of 40 vacation days.

Although Respondent claimed that the initials and the signature on the DD5 were not hers, Respondent admitted that she should have reviewed the DD5s.

Analysis

Specification No. 1 alleges that on July 7, 2011, Respondent failed to properly supervise a vice enforcement operation and failed to ensure that DD5s were properly prepared by two (2) members of service assigned to the vice enforcement operation.

[REDACTED]

[REDACTED] Respondent claimed that the signatures on the DD5s were not hers. However, she admitted that she should have

reviewed these forms. As the supervisor of Batista and Wang, Respondent was required to review these forms and failed to ensure that they were properly prepared. As their supervisor, Respondent was responsible for mistakes made by those she supervised. This failure in conjunction with the failure to properly follow procedures for releasing a prisoner as described in Specification No. 2 constituted a failure to properly supervise a vice enforcement operation.

Therefore, Respondent is found Guilty of Specification No. 1.

Specification No. 2 alleges that Respondent on July 7, 2011 failed to properly follow Department procedures relating to the release of a prisoner after being taken into police custody.

The proper procedure for releasing a prisoner is to void the arrest. When asked why she did not follow the voided arrest procedure for Person C, Respondent answered “[T]here was really no clear reason.” She added that if she had followed this procedure then Person C would have had to remain in the van with other prisoners while the team worked on more enforcements through the night.

Respondent conceded on cross-examination that an individual in custody can be released before paperwork for a voided arrest be prepared back at the stationhouse.

UF-250 forms are prepared after an officer stops an individual who the officer reasonably suspects is committing or about to commit a crime. Regardless of whether it was necessary to return to the precinct, using a UF-250 form to release a prisoner was improper procedure and it was improper for Respondent to direct her subordinate to do this.

Therefore, Respondent is found Guilty of Specification No. 2.

Specification Nos. 3 and 4Background

On August 9, 2011, Respondent conducted a prostitution bust in which she was the team leader. Her team arrested Person A and placed him in the van. Then the team arrested a second person, Person B, who was [REDACTED]. Person A was acting out and making threats from inside the van while Person B was screaming and crying that he was afraid to get in the van with Person A. Respondent did not want to place the two prisoners in the same van “because of safety concerns.”

Respondent testified that she had an idea to put Person B in Riccardo’s van where two officers could sit in the back and watch him. Riccardo replied, “I’m not putting that fucking thing in my car.” Then Respondent asked about the chase auto and Riccardo replied, “What the fuck do we need tools for? We’re doing a street pros condition.” Respondent was concerned about not having tools for upcoming operations in case she needed to extract her undercover. Respondent asked again what were they going to do. Riccardo told her to put Person B in her car. Respondent said that she could not do that and pointed out that Riccardo had the car with no tools in it. Riccardo then replied, “Why are we fucking talking about tools for? I don’t get the whole tools thing; we’re still doing street pros.” Respondent testified that, after the two went back and forth, “I don’t remember who it was, but eventually Person B was placed inside the p-van.”

Lieutenant Riccardo testified that he never witnessed or heard Person A banging or acting up, but that Person A looked fine when he checked. Riccardo indicated that during enforcement some individuals who are unhappy about being arrested sometimes scream

about being placed in the van. Meanwhile, there was a lot of action that night and the team needed to resume patrol.

Riccardo also stated that Respondent wanted to release Person A by using a UF-250 form. This is an improper procedure and he was surprised that Respondent wanted to do this.

Riccardo testified that he asked Respondent to place Person B in the van. Respondent said, "Fuck that, I'm not putting that in the back of the P van." She said, "[W]hy don't you put him the back of your car?" Riccardo said, "[A]bsolutely not... You have two choices. Either you put it in the P van or you can put the prisoner in the back of your car." Then it became "just an ongoing thing back and forth." Finally he ordered the detectives to put the prisoner in the back of the van with Person A. Riccardo stated that his debate with Respondent lasted at least ten minutes.

Two detectives on Respondent's team, Rivera and Batista, testified about the interaction that they witnessed between Respondent and the lieutenant.

Detective Rivera corroborated Riccardo's testimony, including Respondent's statement, "No fucking way. I'm not doing that."

Detective Bastista did not hear specifically what Respondent and Riccardo were saying, but stated, "[T]hey were going back and forth as far as what car they're putting him in. Should we put him in the car, should we put him in the van, but you know, they were talking about Person B, we are not going to put him there."

After Person B was finally placed in the van, Riccardo testified that Respondent announced, "[T]hat's a rap, we're going in." Riccardo said, "[N]o, we are not going back. We have more enforcement to do... [L]et's go, everybody resume enforcement.

Respondent turned to the lieutenant and said, "I don't give a fuck, I'm going in." Then she walked away, got in the car, drove away and radioed, "[F]ield team, back to the barn." This meant she was telling the team that enforcement was over and to head back to the precinct. Riccardo radioed, "[N]o...we have more enforcement to do again. This is Lieutenant Riccardo, do not go in. I said resume enforcement." Respondent radioed, "Field team, this is the team leader, back to the barn." Everyone drove away. Riccardo tried to call her on her cell phone to talk to her privately, but just got Respondent's voice mail. The team headed back to the 7 Precinct.

Respondent claimed that she never heard the lieutenant's order over the radio to continue enforcement. She indicated that if she had heard his order, she would have complied.

Rivera and Batista both heard Riccardo order the team to continue enforcement. They both heard Respondent disagree with Riccardo's order to continue enforcement. They both heard her give the order to instead return to the precinct.

Analysis

Specification No. 3 alleges that Respondent on August 9, 2011 was discourteous to Lieutenant Louis Riccardo.

Specification No. 4 alleges that Respondent on August 9, 2011, having been given a lawful order by Lieutenant Louis Riccardo regarding the safeguarding of a prisoner, wrongfully and without just cause refused to comply with this order.

There is no dispute that there was an argument between the lieutenant and Respondent. Besides the statements of Respondent and Riccardo, two other detectives on

the team confirmed hearing and observing the altercation. While there was testimony about cursing, Respondent's cursing at the lieutenant was not corroborated. Nonetheless, the evidence demonstrated that Respondent's argument with Riccardo was heated and protracted.

Besides Riccardo's testimony, two members of Respondent's team heard Respondent disagree with the lieutenant about his order over the radio. Thus, Respondent's claim that she did not hear the order is not credible.

It is established Department policy that the order by the highest ranking officer must be followed. Respondent's attorney maintained that as the team leader, Respondent, and not the lieutenant, had to make the final decision about the team. However, once the lieutenant is on the scene, a sergeant must defer to the lieutenant.

Respondent's attorney also indicated that the lieutenant's orders to place a [REDACTED] into a prison van with a prisoner who was threatening violence and then to continue the tour was unlawful. Whether or not the lieutenant's order was a lawful or a good one is not the issue before this tribunal. If Respondent genuinely believed that the lieutenant was giving her an unlawful or a misguided order, she could have asked him to step aside to speak with her privately, away from the team. If she still genuinely believed that she was being given an unlawful order, then at the end of her tour she could have followed the chain of command to report the incident.

By arguing extensively with him about his orders in front of members of the team, both at the scene and over the radio, Respondent was discourteous to her supervisor. The lieutenant gave Respondent a lawful order to place a prisoner in the van which Respondent was required to follow swiftly and with courtesy.

Therefore, Respondent is found Guilty of Specifications No. 3 and 4.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 30, 1995. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate recommended a penalty of 30 vacation days. Because of Respondent's display of courtesy and her failing to follow a direct order by her supervisor in front of members of the service, the Advocate's recommendation is appropriate.

Therefore, it is recommended that Respondent forfeit 30 vacation days.

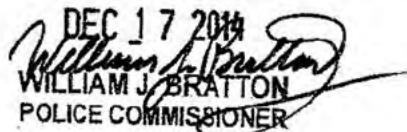
Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner Trials

APPROVED

DEC 17 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

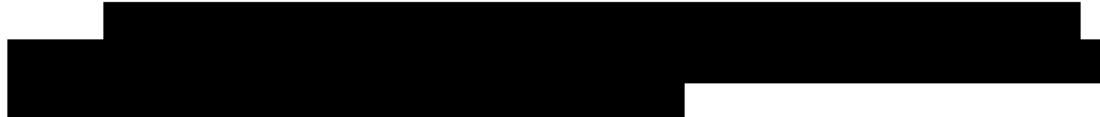
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER WANDA NEGRON
TAX REGISTRY NO. 914670
DISCIPLINARY CASE NO. 2011-6023

In 2013 Respondent received a ratings of 4.5 “Highly Competent/Extremely Competent” on her annual performance evaluation. In 2012 she received a rating of 4.0 “Highly Competent” and in 2010 a rating of 3.5 “Competent/Highly Competent.” Respondent has two medals for Excellent Police Duty.



Respondent has no prior formal disciplinary record.

For your consideration.

Amy J. Porter
Assistant Deputy Commissioner – Trials